

STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION

Illinois Commerce Commission :  
On Its Own Motion :  
-vs- :  
Commonwealth Edison Company : ICC Docket No. 08-0532  
:  
Investigation of Rate Design Pursuant :  
to Section 9-250 of the Public Utilities Act :

REPLY BRIEF ON EXCEPTIONS  
OF  
THE COALITION TO REQUEST  
EQUITABLE ALLOCATION OF COSTS TOGETHER  
**REACT**

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FLINT HILLS RESOURCES, LLC  
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THE METROPOLITAN WATER RECLAMATION DISTRICT  
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The Coalition to Request Equitable Allocation of Costs Together (“REACT”), comprised of A. Finkl & Sons, Co., FutureMark Paper Company f/k/a Alsip Paper Condominium Association, Aux Sable Liquid Products, LP, The City of Chicago, Commerce Energy, Inc., Flint Hills Resources, LLC, Integrys Energy Services, Inc., The Metropolitan Water Reclamation District of Greater Chicago, PDV Midwest Refining LLC, United Airlines, Inc., and Wells Manufacturing, Inc.,<sup>1</sup> by and through its attorneys, DLA Piper LLP (US), hereby submits its Reply Brief on Exceptions in connection with parties’ Briefs on Exceptions to the February 1, 2010 Proposed Interim Order (“Proposed Interim Order” or “PIO”) regarding the Commission’s investigation of rate design of Commonwealth Edison Company (“ComEd”).

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<sup>1</sup> Positions stated herein do not necessarily represent the positions of any individual member of REACT.

## I.

### INTRODUCTION

There now appears to be universal support for the central message that REACT has been advancing for years: the Commission should ensure accurate, appropriate, and equitable allocation of ComEd's costs. The problem comes when trying to translate that theory into action. Unfortunately, ComEd repeatedly has failed to produce the information necessary for the Commission to appropriately evaluate and allocate ComEd's costs. ComEd failed to present the information in its 2007 Rate Case (ICC Docket No. 07-0566), so the Commission initiated the instant proceeding. ComEd again failed to present the information in the instant proceeding, so the Staff recommended and Proposed Interim Order endorse the Commission's initiation of a comprehensive Workshop Process. Now, the only entities that oppose a comprehensive Workshop Process are ComEd and the Commercial Group. REACT respectfully requests that the Commission enter an Interim Order that initiates a comprehensive Workshop Process, consistent with the process outlined in REACT's Brief on Exceptions.

Throughout the instant proceeding and the ComEd 2007 Rate Case, REACT has advocated for the Commission to ensure accurate, appropriate, and equitable allocation of ComEd's costs among ComEd's customer classes and between the supply and delivery services components of ComEd's rates. (*See* REACT Initial Br. at 1-2, 6; REACT Reply Br. at 1-2; REACT Br. on Exceptions at 2.)

ComEd purports to agree with REACT's fundamental position, stating: "ComEd does, however, believe that interclass allocation should reflect cost causation in order to send proper price signals to its customers." (ComEd Br. on Exceptions at 1.) Commission Staff and most of the other parties to the instant proceeding appear to also share this goal. Thus, the issue becomes

whether and to what extent evidence has been presented to justify ComEd's proposed cost allocation or an alternative cost allocation submitted by other parties. Clearly, ComEd's insufficient evidence failed to justify its proposed cost allocation – the Proposed Interim Order and most of the parties raise substantial questions about the validity of multiple aspects of ComEd's analysis, including prominently, ComEd's proposed treatment of the primary/secondary split and its cost allocation approach to rates for the largest customer classes. The Proposed Interim Order's deferral of these issues to a Workshop Process is fair and appropriate, and should be implemented, with the clarification (supported by REACT, ICC Staff, the Attorney General's Office, and Metra/CTA) that further formal discovery and evidentiary hearings. (*See* REACT Br. on Exceptions at 7; ICC Staff Br. on Exceptions at 3-7; AG Br. on Exceptions at 2-3; Metra/CTA Br. on Exceptions at 6-8.)

On one aspect of cost allocation – Customer Care Costs – REACT's credible and persuasive evidentiary presentation forms a solid basis for the Commission to determine now that ComEd should immediately reallocate approximately \$88 million from its delivery services rates to its supply rates. (*See* REACT Br. on Exceptions at 9-14.) Nothing in ComEd or any other party's Brief on Exceptions explains a valid evidentiary basis to defer this decision. To the extent that any party has theoretical concerns about the allocation of Customer Care Costs under REACT's approach, that party will remain free to raise those issues in the Workshop Process or in future cases, if evidence exists to support an alternative view. However, at this stage, in light of REACT witness Mr. Merola's comprehensive analysis and the lack of any credible alternative or contrary analysis, the Commission should order the allocation of Customer Care Costs now.

Nothing in ComEd's Brief on Exceptions undermines the Proposed Interim Order's careful analysis or the validity of the questions that REACT and other parties have raised about

ComEd's approach. However, as discussed in its Brief on Exceptions, REACT respectfully continues to request the following revisions to the Proposed Interim Order:

- **The Commission should ensure that any Workshop Process initiated to address the primary/secondary split should explicitly address the deficiencies in ComEd's ECOSS raised throughout this proceeding by REACT.**
- **Given that REACT was the only party providing a thorough, reasoned, embedded cost analysis of Customer Care Costs, the Commission immediately should adopt REACT's cost study for allocating ComEd's Customer Care Costs. To the extent that ComEd may have additional data that would be helpful in evaluating the allocators used in REACT's cost analysis, the Commission should require ComEd to present that information in the Workshop Process.**

Accordingly, REACT requests that the Commission enter an Order consistent with the arguments outlined herein, in its Brief on Exceptions, and in Appendix A to the Brief on Exceptions.

## II.

### REPLY TO COMED

The Proposed Interim Order confirms what REACT has maintained throughout this proceeding: that ComEd still has failed to provide sufficient information and verifiable data to support its proposed definition of primary versus secondary service, as well as its proposed allocation of costs associated with serving customers in those two categories. The Proposed Interim Order thus properly directs Staff to initiate a Workshop Process to evaluate these issues, among others.

Nothing in ComEd's Brief on Exceptions undermines or even addresses the Proposed Interim Order's conclusion that ComEd again has failed to provide sufficient evidence regarding the primary/secondary split issue. Certainly, nothing in ComEd's Brief on Exceptions rebuts REACT's consistent position that the rate increases implied by ComEd's revised ECOSS would impose a massive, disproportionate, and unjustified burden upon the largest customers. Instead,

ComEd's Brief on Exceptions merely repeats broad statements in an attempt to paint its ECOSS as something more than it is and avoid meaningful dialogue regarding the data ComEd should have previously produced. REACT replies as follows.

**A. ComEd's Vision Of A Limited Workshop Process Should Be Rejected**

The Proposed Interim Order appropriately recognizes that ComEd's ECOSS continues to lack credibility and, if implemented, would impose unjustified, enormous, disproportionate rate increases upon some individual customers of ComEd. (*See* PIO at 34-40.) Those increases would top \$2 million annually for some individual customers. (*See* REACT Init. Br. at 17-22) The record evidence – submitted not only by REACT but also by Staff and other intervenors such as the City of Chicago, IIEC, Metra, and the CTA – demonstrates that substantial deficiencies in the ECOSS persist. (*See* PIO at 35-40.) The evidence also demonstrates that ComEd's attempt in this proceeding to fill the gaps – through questionable assumptions and deficient, tiny sampling, and the like – raised more questions than it answered. The Proposed Interim Order properly validates these arguments. (*See id.*)

ComEd's Brief on Exceptions advocates for only "focused workshops" that would occur "subsequent to the conclusion of this proceeding, and would be limited in scope." (ComEd Br. on Exceptions at 4) (emphasis in original). ComEd's position must be rejected – ComEd's failure to provide sufficient information to evaluate critical aspects of its ECOSS means that the ECOSS must be reexamined on a comprehensive basis. Recall that the Initiating Order called for an investigation into "all aspects of the rate design of ComEd." (ICC Docket No. 08-0532, Initiating Order at 2.) That comprehensive directive called for comprehensive information from ComEd – ComEd neither provided that comprehensive information nor provided an ECOSS that sufficiently addressed even the specific directives of the Initiating Order. Thus, the Workshop

Process should comprehensively address the issues raised in this proceeding, to the extent that a credible and persuasive evidence was not provided in favor of a position.

ComEd improperly criticizes the Proposed Interim Order for endorsing Staff witness Mr. Lazare's position. Mr. Lazare expressed clearly and unequivocally that the Workshop Process should not be constrained to the limited subject matter that ComEd favors. (*See generally* REACT Cross Ex. Lazare 14.) Staff reiterates that position in its Brief on Exceptions. (*See* Staff Br. on Exceptions at 2-7.) Indeed, Staff argues that even certain analyses with which Staff takes issue should be subject to a further revised cost study by ComEd before the Workshop Process, so that the revised cost study can be included in that process. (*See id.* 8, 11.) The Commission should explicitly find that all issues raised by REACT relating to calculation of cost of service to the largest customer classes are to be included in the Workshop Process. (*Id.* at 5; *see also* REACT Init. Br. at 29-30; 49-50.)<sup>2</sup>

The Workshop Process must include the review of costs associated with providing service to REACT members and similar customers, including for Extra Large and High-Voltage customers.<sup>3</sup> Data made available in the Workshop Process must include actual cost data and/or reliable and verifiable estimates of cost data associated with serving those customers.

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<sup>2</sup> Consistent with the views expressed by the Commission Staff, the Illinois Attorney General's Office, and Metra/CTA, the Proposed Order should also recognize the possible need for formal discovery and evidentiary hearings to the extent that the Workshop Process does not result in appropriate information exchange or resolution of issues. (*See* REACT Br. on Exceptions at 7; ICC Staff Br. on Exceptions at 3-7; AG Br. on Exceptions at 2-3; Metra/CTA Br. on Exceptions at 6-8.)

<sup>3</sup> Recall that ComEd initially estimated that the information collection necessary to provide meaningful information might take a year or more. ComEd substantially revised its position, and indicated that the information collection could be performed in approximately six months and a much lower cost than initially claimed. (Tr. at 675:12-677:24.)

**B. ComEd's Position Concerning Cost Allocation Associated With Transformers Must Be Rejected**

The Proposed Interim Order raises substantial questions about ComEd's analysis of the correct allocation of transformer-related costs between primary and secondary customers. (*See* PIO at 37-39.) Ultimately, the Proposed Interim Order rejects ComEd's attempt to allocate transformer costs to primary customers. (*See id.* at 38-39 (“[W]e find that ComEd's current method of allocating transformer costs is not appropriate.”).) ComEd's Brief on Exceptions raises more questions than it answers about cost allocation associated with transformers. (*See* ComEd Br. on Exceptions at 12-15.) ComEd states that costs for transformers should be allocated as primary system costs. (*See id.* at 12.) REACT's position – which is consistent with the Proposed Interim Order's view – is that ComEd should be required to allocate transformers as secondary. After that initial allocation, there could be a reallocation of the transformation costs to the over 400 kW size customers. ComEd has more than 440,000 installed transformers, yet only 6,200 over 400 kW size primary customers. (*See* ComEd Ex. 6.0, Alongi Rebuttal at 23:560) Thus, ComEd's view appears to have things backwards – it would be much more appropriate to allocate the costs of transformation to secondary service as an initial matter, and then to identify transformers serving primary customers. This method would tend to reduce the cost allocation errors for transformers. The bottom line is that the Proposed Interim Order accurately concludes that this and other issues associated with the primary/secondary split remain unresolved and that a comprehensive Workshop Process is the proper way to proceed.

Another example of such an unresolved issue is highlighted by the discussion in ComEd's Brief on Exceptions raising questions about the effect of the primary/secondary split for customers that own their own transformers. ComEd states that 300 customers own their own transformers and raises the issue of potentially creating a new customer class for these

customers. (See ComEd Br. on Exceptions at 13-14.) To REACT's knowledge, this is the first time any party has seriously raised the issue in this proceeding of creating a separate customer class for these customers. Whether this were to occur or not, it is important to note that the establishment of such a class would not mean that all other customers are secondary. The proper definition should be related to voltage level, not transformer ownership. For example, if there are two customers receiving service at 12.5 kV that are identical, except for the fact that one owns a transformer and one does not, both should be considered primary customers. Just because one happens to own their transformer should not mean the other is considered secondary. In any event, this is yet another issue that is ripe to be addressed in the comprehensive Workshop Process proposed by the Proposed Interim Order, but that would not be addressed under ComEd's limited workshop proposal.

ComEd also refers to the possible elimination of Rider ACT. (See Br. on Exceptions at 14.) REACT objected to ComEd proposals in Docket No. 07-0566 to eliminate Rider ACT. While ComEd's new proposal of eliminating Rider ACT and creating a separate customer class is interesting, it raises some serious questions. ComEd's Brief on Exceptions (at page 14) references approximately 300 primary customers (above-4 kV by ComEd's definition - but not high voltage over-69 kV) for the new rate class. It is unclear if ComEd is only referring to over-400 kW size non-high voltage customers. ComEd's ECOSS (ComEd Ex. 1.1A at 2) shows that some Small and Medium size customers (< 400 kW) receive Rider ACT credits. Second, some high-voltage customers receive Rider ACT credits and it is unclear how ComEd would adjust their rates downward if Rider ACT were eliminated. Third, REACT understands that credits to customers under Rider ACT are \$0.20533 per kW per month. These credits have not been increased for a long time to REACT's knowledge – probably not since the late 1980's. It is

unclear under ComEd's new rate proposal whether ComEd would just simply use the current credit for designing the rate or update the credit to current (2010) cost levels. REACT would certainly be willing to discuss this new proposal by ComEd in the Workshop Process, but the questions raised make it clear that the Commission is not in a position to rule definitively on this issue at this time.

In summary, REACT respectfully requests that the Commission expressly recognize that all issues raised by the parties to this proceeding should be considered in the Workshop Process; that further formal discovery and evidentiary hearings may be necessary depending on the outcome of the Workshop Process; and that certain other clarifications to the Proposed Interim Order as set forth in Appendix A to REACT's Brief on Exceptions are appropriate to accurately reflect REACT's position.

**C. ComEd's Position On Customer Care Costs  
Continues To Lack Credibility**

The Proposed Interim Order appropriately questions whether ComEd's purported "analysis" and allocation of certain costs actually encompasses all of its Customer Care Costs, and further acknowledges that ComEd's avoided cost methodology is wholly deficient where all other costs are allocated on an embedded cost basis. (*See* PIO at 67-69.) The Proposed Interim Order also recognizes the validity of REACT's approach while questioning the credibility of ComEd's approach. (*Id.* at 67.) In sum, ComEd's "analysis" is contrary to basic ratemaking principles, was thoroughly discredited by REACT, and is not responsive to the Commission's directive.

In its Brief on Exceptions, ComEd identifies two purported errors with the Proposed Interim Order's view of the Customer Care Cost allocation. (*See* ComEd Br. on Exceptions at 2-3.) First, ComEd claims that even though it asserts that more than 1% of Customer Care Costs

are related to supply, it would continue to incur those costs even if it had no supply customers. (*See id.* at 2-3, 6.) Second, ComEd argues that its allocation of Customer Care Costs is dictated by prior Commission decisions from which it cannot stray in the instant proceeding, even though the Initiating Order specifically requires an investigation of Customer Care Cost allocation. (*See id.* at 3, 6-8.) Neither of these issues is persuasive and both have been addressed comprehensively by REACT.

**1. ComEd’s Suggestion That It Will Continue To Incur 100% Of Its Customer Care Costs Regardless Of The Level Of Customer Switching Is Implausible And Irrelevant Hyperbole**

The focus of ComEd’s position on Customer Care Costs seems to have changed somewhat. ComEd previously emphasized that no more than 1% of its Customer Care Costs are supply related:

ComEd thus concluded that other than the costs already identified as related to supply in ComEd’s 2007 Rate Case [i.e., .04% of total Customer Care Costs], no additional customer services costs are related to the provision of supply services; instead such costs are classically delivery service costs allocable to and properly recovered from all customers because ComEd provides deliver service to all its customers.

(ComEd Dec. 17, 2009 Summary of Positions at 12.) ComEd now back pedals and openly admits that “clearly more than 1% of Customer Care costs have some relation to the supply function.” (ComEd Br. on Exceptions at 6.) However, ComEd suggests that it simply has no way to figure out a reasonable allocation methodology. (*See id.* at 7.) This argument is fatuous – Mr. Merola’s study of Customer Care Costs demonstrates that a rational and credible approach to cost allocation is completely feasible.

In any event, relying on its discredited position that accurate cost allocation is impossible, ComEd’s Brief on Exceptions then repeats the argument ComEd has previously made: that ComEd should not have to allocate Customer Care Costs since it would continue to incur those

costs if all customers were to switch away from ComEd supply. Thus, ComEd's primary "proof" in support of its failure to assign any meaningful Customer Care Costs to its supply function was the wholly implausible, completely hypothetical scenario that if there were enormous rates of customer switching, ComEd would still incur Customer Care Costs.

The Commission should summarily reject ComEd's reliance on ComEd's purely hypothetical argument. The Commission does not base utilities' rates upon implausible hypotheticals; it uses a "test year," supplemented by actual data and expert analysis. Here, however, ComEd asks the Commission to accept as proper ratemaking practice a fantastic assumption about customer switching at some unspecified future moment that has no basis in reality, even under ComEd's projections. That is, ComEd is not relying on test year data of any sort; nor is it relying on actual data that exists now or even on some expert projection of a reality that might, at least theoretically, exist in the future. In short, ComEd's position is *totally divorced* from any actual data in the evidentiary record (or even outside the evidentiary record). The reality is that ComEd always has provided supply services to a substantial number of customers, and, will continue to do so into the foreseeable future; in so doing, ComEd incurs substantial Customer Care Costs. The Commission should allocate the Customer Care Costs based upon this reality.

Moreover, the premise behind ComEd's "analysis" was thoroughly discredited during the course of these proceedings, not only in the pre-filed testimony of REACT witness Mr. Merola but also during the cross examination of ComEd's Customer Care Cost witness Mr. Meehan.

Mr. Merola explained:

ComEd asserts that if it were not providing supply services to a single customer (i.e., if there were 100% switching to RESs), ComEd's Customer Care Costs would actually go up. ComEd apparently is saying that if it had *no* obligations associated with procuring or providing power to *anyone*, ComEd's Customer

Care Costs would **increase**. This conclusion seems to be totally implausible on its face, and, at a minimum, raises fundamental questions about ComEd's analytical model.

(REACT Ex. 2.0 at 12:251-13:260; *see also* REACT Ex. 4.0 at 15:289-304.)

Mr. Merola then explained that ComEd's concern over cost allocation problems associated with high levels of residential customer switching are theoretical at best, since ComEd admits that it projects switching levels that are *orders of magnitude smaller* than the switching levels that would lead to its theoretical concerns. (*See* REACT Ex. 4.0 at 16:306-17:333.) This point was illustrated at the hearings when ComEd witness Mr. Meehan admitted that even if ComEd's projections underestimated residential switching by 1000%, the level of switching would still be only approximately 1.5%. (*See* REACT Init. Br. at 47-48; Tr. at 419:8-420:7.) The bottom line is that notwithstanding ComEd's repetition of this argument, the evidence both provided on direct from the REACT witness and elicited on cross-examination from the ComEd witness conclusively demonstrated that ComEd's position is nothing more than a diversion.

In an apparent last gasp attempt to add some credibility to its argument, ComEd points to a concern over functionalizing costs associated with meters. (*See* ComEd Br. on Exceptions at 8.) The implication seems to be that certain costs can be accurately allocated and some cannot. This argument is truly bizarre and serves only to illustrate the credibility and persuasiveness of REACT witness Mr. Merola's testimony. (*See also* REACT Reply Br. at 19.) At the evidentiary hearing, ComEd cross-examined Mr. Merola on this very point -- specifically, ComEd questioned Mr. Merola on why he did not include metering costs in his allocation, as if to suggest that he should have. Mr. Merola soberly explained that under his conservative approach to the cost allocation question, he determined in his professional opinion that such an allocation was inappropriate. He also pointed out that if he had made an allocation of meter costs, it would

have “certainly increased[d] the allocation of the supply function,” which is exactly what ComEd has been fighting against. (Tr. at 527:4-528:1.) In other words, on this point, ComEd is simply agreeing with Mr. Merola’s position – certain costs are not subject to allocation between delivery services and supply. ComEd, however, would ask the Commission to extrapolate from this example to conclude that *no Customer Care Costs* are subject to reasonable allocation. That view is roundly and completely rebutted by the thorough and credible analysis that Mr. Merola offered and that constitutes the overwhelming weight of record evidence on Customer Care Cost evidence.

**2. ComEd’s Claim That Commission Precedent Precludes Accurate Allocation Of Customer Care Costs Lacks Credibility**

ComEd continues to claim that it is constrained by prior Commission rulings such that it cannot possibly undertake an accurate allocation of Customer Care Costs. (*See* ComEd Brief on Exceptions at 3.) Though ComEd does not actually cite any prior Commission ruling in its Brief on Exceptions, it appears to be relying on the Commission’s ruling in ICC Docket No. 07-0528/07-0531. ComEd’s argument was examined and discredited during the course of the instant proceeding. (*See* REACT Reply Br. at 16-18.)

ICC Docket No. 07-0528/07-0531 involved ComEd’s proposed procurement plan and related supply tariffs. As ComEd itself previously explained it (*see* ComEd Init. Brief at 11), in that proceeding Staff expressed some concern about whether the “proposed procurement tariff would create an inappropriate incentive [for ComEd] to *inflate the supply rate*” through inappropriate allocation of certain costs. (*Id.*) (emphasis added). To accommodate the Staff concern, ComEd apparently itself decided to modify its tariff to limit the kinds of costs that could be recovered through Rider PE. (*See id.*) The Commission ultimately approved that tariff. (*See id.*)

Arguing that this episode constrains ComEd's ability to accurately allocate Customer Care Costs as a result of the Commission's explicit directive in the Initiating Order lacks credibility, to say the least. Of course, it is also well established that Commission Orders do not have precedential standing of the sort that judicial orders possess. (*See Abbott Laboratories, Inc. v. Ill. Commerce Comm'n*, 289 Ill. App. 3d 705, 715, 682 N.E.2d 340, 349 (1st Dist. 1997); ICC Docket No. 00-0393, *Re: Ill. Bell Tel. Co.*, March 28, 2002 Order on Second Rehearing at 21.) Even if they did, the Initiating Order in the instant proceeding post-dates the Order in ICC Docket No. 07-0528/07-0531 by more than nine months, so there is no question that the Initiating Order would take precedence over the older order. Moreover, even if the Order in Docket No. 07-0528/07-0531 were relevant, Staff's concern in that case clearly related to the fact that ComEd might have some incentive to allocate certain costs toward the supply function and away from the delivery services function. In this case, ComEd is trying to do *exactly the opposite* – ComEd is strenuously trying to avoid assigning or allocating anything beyond .04% of Customer Care Costs to the supply function. Thus, it is oddly ironic that ComEd would purport to believe that the Order in Docket No. 07-0528/07-0531 is precedential under the facts of this proceeding and somehow trumps the Commission's explicit directive in initiating the instant proceeding to accurately allocate Customer Care Costs.<sup>4</sup>

At the evidentiary hearing, ComEd witness Mr. Alongi tried to defend ComEd's position regarding "precedent," but even he admitted that "as a matter of ratemaking principle" supply-related Customer Care Costs "could be" allocated properly through supply rates and also

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<sup>4</sup> ComEd's Brief on Exceptions cites the Commission's February 5, 2008 Order in the Peoples Gas/North Shore Gas rate case (ICC Docket No. 07-0241/07-0242) quoting a statement about precedent in Commission proceedings. That quote itself refers to precedential treatment of Commission orders being inapplicable where "clear and distinguishable reasons for deciding a case differently" exist. (ComEd Br. on Exceptions at 7.) The issues in the instant proceeding are clear and distinguishable from the issue in Docket No. 07-0528/07-0531, both procedurally and substantively.

admitted that the Commission directed ComEd to examine the Customer Care Cost issue again, notwithstanding the Order in Docket No. 07-0528/07-0531. (*See* Tr. at 632:14-633:4.)

The bottom line is that REACT witness Mr. Merola is the only witness who undertook the analysis required to answer the Commission's directive regarding allocation of Customer Care Costs. The Commission asked about the cost of providing Customer Care "to a customer taking supply from an alternative supplier versus the cost of providing Customer Care to a customer taking supply from ComEd." (Initiating Order at 2.) Mr. Merola performed the requisite analysis and answered the question. (*See generally* REACT Exs. 2.0, 4.0; REACT Init. Br. at 12-15; 31-41.)

Mr. Merola's written testimony explains his analysis in detail. That analysis is recounted in REACT's Initial and Reply Briefs. (*See* REACT Init. Br. at 31-41; REACT Reply Br. at 11-15.) As ComEd's own witness Mr. Meehan admitted at the hearings, Mr. Merola analyzed the full amount of Customer Care Costs, as opposed to a smaller amount arbitrarily chosen by ComEd for analysis. (*See* Tr. at 392:9-393:5.) Mr. Merola then provided specific figures, both to show the total amount of Customer Care Costs that should be allocated to the delivery services and the supply functions, and also provided precise figures about the specific costs to provide Customer Care to individual residential and non-residential customers, in direct response to the Commission's directive in the Initiating Order. (*See* REACT Init. Br. at 14-15, 32.)

The evidentiary record is more than sufficient to justify the Commission immediately adopting REACT's methodology for allocation of Customer Care Costs. If the Commission desires to further clarify one aspect of REACT's methodology – the allocation factors employed for costs attributable to both delivery services and supply functions – the Commission should

direct ComEd to provide additional data in the Workshop Process, which then perhaps can be used to suggest a further minor modification to ComEd's rates.

### III.

#### **REPLY TO COMMISSION STAFF**

Staff's Brief on Exceptions also comments on the issue of Customer Care Costs. (*See* Staff Br. on Exceptions at 7-11.) Staff takes the position that further investigation of the issue is appropriate, stating:

Staff does not object to the proposal that ComEd be required to present an embedded cost allocation of these customer care costs. The regulatory process would not be harmed by an analysis to show how an embedded cost allocation of these costs might be conducted.

(*Id.* at 8.) Although Staff disagrees with REACT's position that the evidentiary record forms a credible and persuasive basis for the Commission to order immediate allocation of Customer Care Costs between delivery services and supply functions, Staff does not accept ComEd's approach and recommends that the Proposed Interim Order be amended to include the following language:

Nevertheless, the Commission believes the record would benefit from the Company providing an embedded allocation of these costs for the workshops and it is open to further arguments both for and against the embedded cost approach in future proceedings.

(*Id.* at 11.)

While indicating that it does not accept ComEd's view of Customer Care Costs, Staff raises three concerns about the allocation of Customer Care Costs that REACT proposes. These arguments are not new; REACT addressed each of them during the course of the proceeding, but nevertheless for the Commission's convenience will address them here. (*See, e.g.,* REACT Reply Br. at 22-24.)

However, as an initial matter, the Commission should recall REACT's prior explanation that Staff's position regarding Customer Care Costs conflicts with Staff's admitted fundamental position favoring accurate and equitable allocation of costs. (See REACT Reply Br. at 22-24.) Staff witness Mr. Lazare endorsed accurate Customer Care Cost allocation during cross examination in the instant proceeding:

Q. You would agree that, as a general matter, delivery services costs should be recovered in delivery services rates, right?

A. Yes.

Q. And you agree, as a general matter, supply costs should be recovered in supply rates, right?

A. Yes.

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Q. Would you agree that if the underlying costs associated with providing customer-care services varies substantially between bundled and unbundled customers that the bundled and unbundled rates should be different?

A. Yes.

(Tr. at 463:23-464:5; 467:2-7.)

Nonetheless, in its Brief on Exceptions, Staff states that "the embedded cost approach would create rate disparities between sales and delivery customer that cannot be justified from a cost standpoint. This would send an erroneous price signal concerning the relative cost of bundled and unbundled service." (Staff Br. on Exceptions at 8.) With due respect, this statement is highly questionable on its face. REACT's consistent position is that Customer Care Costs (and all other costs) should be allocated accurately. Assuming accurate cost allocation occurs, any resulting "rate disparities" would be would be fully justified based on basic cost-causation principles. Thus, it is unclear why Staff believes any rate disparity would not be "justified from

a cost standpoint.” On the contrary, such rate disparities specifically would be justified from a “cost standpoint.” Similarly, the rates resulting from accurate cost allocation would, by definition, increase accurate price signals. Staff’s suggestion to the contrary lacks any evidentiary support in the record and contradicts the basic cost-causation principles that Staff has historically indicated it supports.

Staff next notes that REACT’s proposal may conflict with the Commission’s prior “determination of the level of credit for ratepayers if their bill comes from the RES under the Single Bill Option.” (Staff Br. on Exceptions at 8.) This position continues to ring hollow in light of the Commission’s specific findings concerning Customer Care Costs in the ComEd 2007 Rate Case and in the Initiating Order in the instant proceeding. Mr. Merola’s testimony and documentary evidence demonstrate that, in fact, there is a substantial variance between the Customer Care Costs incurred to serve bundled and unbundled customers. (*See* REACT 4.0 at 7:115-8:142.) He showed that for residential customers, the cost to provide Customer Care to a ComEd bundled customer is 45% higher than for a unbundled (i.e., non-ComEd supply customer); for non-residential the cost to provide Customer Care is 163% higher than for a non-ComEd supply customer. (*See id.* at 7:117-8:142; REACT Init. Br. At 32; REACT Reply Br. at 24.) Thus, according to the principle of accurate cost allocation that Mr. Lazare recognized, those costs differences should be reflected in the rates. It is unclear, given its witness’ stated position on cost allocation, why Staff would oppose implementation of that allocation based upon a theoretical concern about rate impacts about which Staff presented no study or analysis. It is also unclear why Staff would interpret an unspecified prior, tangential Commission finding about levels of credit relating to the source of a customer’s bill to override the Commission’s

specific instruction in the Initiating Order in the instant proceeding for an analysis of the accurate allocation of Customer Care Costs.

Mr. Lazare, in contrast to Mr. Merola, acknowledged that he did not actually perform an analysis of allocation of Customer Care Costs, as did Mr. Merola. (*See* Tr. at 466:14-19.) Mr. Lazare also acknowledged that he did not perform any study or analysis to support his theoretical concerns about what precedent might be set for other utilities – indeed, he further acknowledged that he had performed no analysis to even know how other utilities deal with similar cost allocation issues. (*See id.* at 467:12-468:1.) Finally, Mr. Lazare acknowledged that the Commission would have authority to intervene if, in actuality rather than theoretically, there were future unintended consequences on bill impacts resulting from accurate Customer Care Cost allocations. (*See id.* at 468:2-8.) Again, given these fair and candid acknowledgements by Staff’s expert witness, Staff’s position in opposition to accurate allocation of Customer Care Costs is unpersuasive.

Finally, Staff notes that a reallocation of Customer Care Costs consistent with REACT’s analysis would “set a precedent not only for other electric utilities in Illinois, but for all gas utilities as well.” (Staff Br. on Exceptions at 8.) Staff’s point here is unclear. Staff witness Mr. Lazare expressed a preference for accurate rather than inaccurate allocation of Customer Care Cost; REACT’s analysis results in accurate allocation of Customer Care Costs. Accordingly, that should be the result in the instant proceeding based on the record evidence. If persuasive evidence is presented in future cases involving ComEd, other electric utilities or natural gas utilities, it would seem proper and appropriate for the Commission to follow the “precedent” it sets in the instant case. However, it is important to recognize that such a result would not be a departure from Commission policy – the Commission repeatedly has expressed a clear policy in

favor of accurate cost allocation. For example, that policy was articulated in the Final Order in the ComEd 2007 Rate, which referred to the Commission’s “explicit policy objective of assigning costs where they belong.” (ICC Docket No. 07-0566 Final Order at 206; *see also* Tr. at 233:8-18.)

REACT respectfully requests that the Commission immediately order ComEd to allocate its Customer Care Costs in accordance with the cost study and expert testimony presented by REACT, and allow for the parties to further address this issue in the context of the Workshop Process.

#### IV.

#### **REPLY TO THE COMMERCIAL GROUP**

The Commercial Group continues to maintain that its members are paying unjust rates and thereby subsidizing other rate classes based upon “all cost studies performed in the underlying 07-0566 rate case and this rate design proceeding.” (*See* Commercial Group Br. on Exceptions at 5.) This argument is wholly unpersuasive. The Commercial Group’s position rests on the premise that the cost studies in the 2007 ComEd Rate Case (ICC Docket 07-0566) and the instant proceeding establish the “true cost” of service to ComEd’s various customer classes. (*See* REACT Reply Br. at 8-9.) That premise is palpably false and has been rejected by the Commission, as the Proposed Interim Order accurately notes. (*See* PIO at 35.) The Commission concluded that the evidence in the 2007 ComEd Rate Case was so deficient that the ECOSS could not be relied upon to set rates. (*See* 2007 ComEd Rate Case, ICC Docket No. 07-0566, Final Order at 213.) That finding by the Commission is the very reason that the Commission initiated the instant investigation proceeding. (*See* Initiating Order at 2 (directing an investigation into “all aspects of the rate design of ComEd, specifically for the rate increases

granted in Docket 07-0566.”).) The Commercial Group apparently disregards that fact, as well as the Commission’s pointed criticism of ComEd’s ECOSS in the 2007 Rate Case.

Similarly, as the Proposed Interim Order makes quite clear, the evidence in the instant proceeding shows continued substantial deficiencies, questions, problems, and gaps in the current ECOSS. (*See, e.g.*, PIO at 38-40, 83; *see also* REACT Init. Br. at 17-30; Staff Init. Br. at 38; City of Chicago Init. Br. at 3-31; IIEC Init. Br. at 6-30; Metra Init. Br. at 6-12; CTA Init. Br. at 1-2, 6-9.) Thus, the current ECOSS, like the ECOSS in the 2007 ComEd Rate Case, is fundamentally flawed. The Proposed Interim Order accordingly finds that the current ECOSS does not form a reliable basis for changing rates. (*See* PIO at 83.) This finding, again, rebuts the Commercial Group’s suggestion that the question of appropriate rates is somehow resolved by any ECOSS that ComEd has presented to date.

REACT respectfully requests that the Commission reject the Commercial Group’s suggestion that ComEd’s rates should be based upon a faulty ECOSS, and instead direct Staff to initiate a Workshop Process to facilitate discussion among the parties and obtain the missing data.

## V.

### CONCLUSION

At this point, it would be understandable if the Commission were frustrated. Data regarding ComEd’s ECOSS that should have been forthcoming from ComEd with its initial filing of its rate case in 2007 still has not yet been produced, despite the Commission ordering this special investigation centered around obtaining that information. In the face of ComEd’s failure to produce adequate information in the context of these litigated proceedings, the Staff made the reasonable proposal that the Commission initiate a comprehensive Workshop Process,

to encourage a collaborative effort to identify and exchange data efficiently. Now, ComEd and the Commercial Group stand alone in opposing the recommendation in the Proposed Interim Order that the Commission direct ComEd to participate in such a comprehensive Workshop Process. REACT respectfully requests that the Commission enter an Interim Order, consistent with REACT's Brief on Exceptions, Replacement Language, briefs and testimony, and direct the Workshop Process to be initiated with due dispatch.

The Proposed Interim Order correctly decides some important issues in a manner that endorses the general themes of equitable allocation of costs that REACT has articulated throughout the 2007 ComEd Rate Case as well as the instant proceeding. In particular, the Proposed Interim Order reaches some important specific conclusions, including:

- Rejecting ComEd's faulty engineering judgments as a basis for imposing massive and disproportionate rate increases for the over-10 MW customers; and
- Recognizing that ComEd failed to provide an appropriate methodology for correcting its previous misallocation of supply-related Customer Care Costs.

In these respects, the Proposed Interim Order represents a move in a direction consistent with sound ratemaking policies and the pro-competitive mandates of the Act previously embraced by the Commission. Nothing in the parties' Briefs on Exceptions undermines these conclusions.

However, the Proposed Interim Order, in its current form, also misses some significant opportunities to advance these policies. Particularly given the rich evidentiary record presented in the instant proceeding, the Commission should take a *full step* toward implementing real and specific equitable cost allocation and pro-competitive positions. Specifically, on the primary issues addressed by REACT, the Proposed Interim Order should be revised to:

- Explicitly provide that any workshop process to assess the appropriate primary/secondary split include all issues raised by any party to this proceeding, including REACT;
- Recognize the possibility that further formal discovery and evidentiary hearings may be necessary depending on the outcome of the Workshop Process; and
- Adopt REACT’s methodology as proposed for analyzing and allocating Customer Care Costs between the delivery services and supply functions. To the extent that ComEd may have additional data that would be helpful in evaluating the allocators used in REACT’s cost analysis, the Commission should require ComEd present that information in the Workshop Process..

WHEREFORE, REACT respectfully requests that the Commission modify the Proposed Interim Order and enter an Order in the instant proceeding consistent with the arguments herein, in Appendix A to REACT’s Brief on Exceptions, and in the previously-filed briefs and testimony of REACT.

Respectfully submitted,  
**THE COALITION TO REQUEST EQUITABLE  
ALLOCATION OF COSTS TOGETHER**

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